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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SIDNEY NAIMAN, individually and on
behalf of all other similarly situated,

Plaintiff,

v.

RAYOSUN, LLC., FREEDOM SOLAR
SERVICES, LLC and DOES 1 through 10,
inclusive, and each of them,

Defendants.

Case No.: 3:19-CV-00256-JSC

**DEFENDANT'S REPLY BRIEF IN
SUPPORT OF ITS MOTION TO
DISMISS**

Date: April 4, 2019

Time: 2:00 p.m.

Dept.: F

Judge: Hon. Jacqueline Scott Corley

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Defendant Freedom Forever, LLC ("Freedom") has moved to dismiss this Complaint under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiff argues that the Complaint filed alleging claims under the Telephone Consumer Protection Act ("TCPA") is well pled enough to move forward. With the additional information provided in Plaintiff's Opposition,

1 which should have been alleged in the Complaint, Freedom can now confidently state that the
 2 wrong parties have been named in this action and that Freedom Forever, LLC is not the entity
 3 which called, or directed calls to Plaintiff and the calls to Plaintiff were not for the benefit of
 4 Freedom Forever, LLC.

5 6 **II. ARGUMENT**

7 Plaintiff alleges a total of three (3) phone calls: 1) from Rayosun, LLC on October 12, 2017;
 8 2) from Rayosun, LLC on October 15, 2017; and 3) from Bob Gunthy on an unknown date, a Solar
 9 Consultant for Rayosun, LLC and identified as a Solar Specialist for Freedom Solar Services, LLC.

10 **A. None of the Three (3) Phone Calls Mention Freedom Forever, LLC**

11 In the first two calls mentioned in the Complaint, the alleged caller, introduced himself as a
 12 representative of Rayosun, LLC and that Bob Gunthy was a Solar Consultant for Rayosun, LLC. In
 13 the third call, Bob Gunthy, introduced himself as a Solar Specialist for Freedom Solar Services
 14 LLC – no calls were alleged to have been made for and on behalf of Freedom Forever LLC. And,
 15 none of the calls stated a relationship of Rayosun LLC with Freedom Forever, LLC, nor
 16 relationship of Freedom Solar Services LLC with Freedom Forever, LLC. The Complaint also
 17 failed to plead the relationship of the two other Defendants with Freedom Forever LLC, except the
 18 bare allegation of “maze of companies”. It is clear that those calls made for and on behalf of
 19 Rayosun to potential Rayosun customers and not for and on behalf of Freedom Forever, LLC.

22 **B. Freedom Forever, LLC Has No Relationship with Rayosun**

23 Rayosun, LLC, according to the California Secretary of State Business Search, is a Nevada
 24 corporation, with its California agent for service of process being an Amanda Nelson, in San Diego,
 25 California. (businesssearch.sos.ca.gov). The agent for service of process for Freedom Forever, LLC
 26 is definitely not Amanda Nelson. These are not the same or similar agents for service of process. In
 27 fact, Rayosun and Freedom Forever LLC are competitors, not part of some “maze of companies”
 28


1 each working to benefit the other. If Rayosun was calling a customer or a potential customer, it was
2 not on behalf of Freedom Forever. Thus, there is no allegations to justify the inclusion of Freedom
3 Forever LLC in this case – no acts pleaded by the Plaintiff was committed by Freedom Forever
4 LLC.

5
6 **CONCLUSION**

7 For all the reasons stated above, Defendant Freedom Forever respectfully requests that the
8 Court grant this Motion and dismiss each of the causes of action against Freedom Forever, LLC
9 with prejudice.

10 Dated: March 18, 2019

Respectfully submitted,

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12 Dominic G. Mendoza
13 Julie Beth Isen
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PROOF OF SERVICE

I, BILAL KHAN, employed in the County of Riverside, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 43445 Business Park Drive, Suite 110, Temecula, CA 92962.

On March 18, 2019, served the foregoing document(s) described as:

DEFENDANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

☐ **BY FACIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service and said correspondence is deposited with the United States Postal Service the same day.

☐ **BY OVERNIGHT MAIL:** by causing the document(s) listed above to be picked up by an overnight delivery service company for delivery to the addressee(s) set forth below on the next business day.

☐ **BY ELECTRONIC SERVICE:** by electronically serving via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.

Agency/Attorney

Todd M. Friedman Esq.
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21550 Oxnard St., Suite 780
Woodland Hills, CA 91367

Electronic Service Address(es)

tfriedman@toddfllaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **March 18, 2019**, at Temecula, California.


BILAL KHAN